

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

OSCAR ELIBERTO SOLIS,)	
Plaintiff)	
)	
vs.)	CIVIL ACTION NO. 4:12-cv-00785
)	(JURY)
TUBE-TEC BENDING, L.L.C. dba TUBE-)	
TEC BENDING, and MICHAEL W.)	
POWERS, individually)	
Defendants)	

**DEFENDANT, MICHAEL W. POWERS' ORIGINAL ANSWER
AND ORIGINAL COUNTERCLAIM**

TO THE HONORABLE UNITED STATES DISTRICT JUDGE:

COMES NOW, Defendant, MICHAEL W. POWERS, who files this Original Answer and Original Counterclaim, responding to Plaintiff's First Amended Original Collection Action Complaint, showing unto the court the following:

1. Defendant denies the name used in paragraph 1. Defendant admits the stated business mission of the Co-Defendant entity in paragraph 1.
2. Defendant denies the allegations in paragraph 2.
3. Defendants denies Plaintiff's entitlement to bring this action and to recover any relief under the Fair Labor Standards Act, as averred in paragraph 3.
4. Defendant admits jurisdiction as averred in paragraph 4.
5. Defendant admits venue in this district, as averred in paragraph 5.
6. Defendant denies the allegations in paragraph 6, although it admits Plaintiff performed work as an independent contractor for the Co-Defendant entity within the three year period

before filing Plaintiff's Complaint.

7. Defendant denies the allegations in paragraph 7, although he admits the Co-Defendant entity is a Texas limited liability company.

8. Defendant denies the allegations in paragraph 8, except he admits that he is a company manager, member, officer and/or director.

9. Defendant denies the allegations in paragraph 9.

10. Defendant denies the allegations in paragraph 10.

11. Defendant denies the allegations in paragraph 11.

12. Defendant admits the averments in paragraph 12, but denies Plaintiff is an employee.

13. Defendant denies the allegations in paragraph 13.

14. Defendant denies the allegations in paragraph 14.

15. Defendant denies the allegations in paragraph 15.

16. Defendant denies the allegations in paragraph 16.

17. Defendant denies the allegations in paragraph 17.

18. Defendant denies the allegations in paragraph 18.

19. Defendant incorporates herein its responses above to paragraphs 1 through 18.

20. Defendant denies the allegations in paragraph 20.

21. Defendant denies the allegations in paragraph 21.

22. Defendant denies the allegations in paragraph 22.

23. Defendant denies the allegations in paragraph 23.

24. Defendant denies Plaintiff's entitlement to any of the relief requested in the Prayer paragraph in Plaintiff's First Amended Original Collection Action Complaint.

SPECIFIC DENIALS

25. Pursuant to FRCP 9(a)(2), Defendant denies that the Co-Defendant's proper entity name is TUBE-TEC BENDING, L.L.C. dba TUBE-TEC BENDING, and asserts the Co-Defendant entity does not have capacity to be sued under that name. The Co-Defendant's true entity name is TUBE BENDING, L.L.C. d/b/a TUBE-TEC BENDING, a Texas limited liability company.

26. Defendant denies that he has the capacity to be sued as an "employer" under the FSLA.

27. Defendant denies that Plaintiff has capacity to sue as an "employee" under the FLSA.

AFFIRMATIVE DEFENSES

28. As an affirmative defense, Defendant pleads waiver.

29. As an affirmative defense, Defendant pleads equity, as Plaintiff comes into this court with unclean hands.

30. As an affirmative defense, Defendant pleads estoppel.

ORIGINAL COUNTERCLAIM

31. Defendant asserts a Counterclaim under the Texas Declaratory Judgments Act, Section 37.001 et seq. Texas Civil Practice & Remedies Code, seeking judicial declaration that Plaintiff was an independent contractor of TUBE BENDING, L.L.C. d/b/a TUBE-TEC BENDING and consequently, this Defendant does not fall within the definition of "employer" as defined by 29 U.S.C., Section 203(d).

PRAYER FOR RELIEF

32. WHEREFORE, Defendant, MICHAEL W. POWERS, prays that a "take nothing" Judgment be entered in his favor, that Plaintiff's Complaint be dismissed with prejudice, that Defendant recover his court costs incurred in having to defend this suit, and that the court grant

Defendant such other legal and equitable relief to which the court deems just and proper.

Respectfully submitted,

By: /s/ Chris Cammack
Christopher M. Cammack
State Bar No. 03682100
Federal I.D. No. 6193
10900 Northwest Freeway, Suite 108
Houston, Texas 77092
Telephone: 713-960-1921
Telecopier: 713-960-1922
E-mail: cmcammack@pdq.net

ATTORNEY-IN-CHARGE FOR DEFENDANTS,
TUBE BENDING, L.L.C. d/b/a TUBE-TEC
BENDING and MICHAEL W. POWERS

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the foregoing Defendant's Original Answer & Original Counterclaim has been served by certified mail, return receipt requested upon Plaintiff's counsel of record, Mark Siurek, Warren & Siurek, L.L.P., 3334 Richmond Avenue, Suite 100, Houston, Texas 77098 on August 6, 2012.

/s/ Chris Cammack
Christopher M. Cammack